December 4, 2008

*Via Overnight Mail and Electronic Submission*

Mary D. Nichols, Chair

California Air Resources Board

1001 “I” Street

Sacramento, CA 95814

Re: State Building and Construction Trades Council of California

Comment on the AB 32 Proposed Scoping Plan

Dear Chairman Nichols:

These comments are submitted on behalf of the State Building and Construction Trades Council of California (“Building Trades Council”). The Building Trades Council is the umbrella organization for approximately 350,000 union construction workers in California. The Building Trades Council has been in California for over 100 years and has a strong interest in ensuring that California maintains a robust economy, establishes sustainable patterns of growth and fosters a bright environmental future for generations to come. The Building Trades Council recognizes the immensity of the task that CARB has undertaken in putting together this scoping plan. CARB has done a commendable job thus far. We applaud CARB’s decision to make direct regulatory mandates and energy efficiency so prominent in the Scoping Plan. However, the Scoping Plan should be amended to provide stronger protections for California’s environment and workforce.

For example, as described in these comments, the Scoping Plan does not contain sufficient protections to avoid linkage with other jurisdictions from becoming a drain on the California economy and a drain on the environmental co-benefits that should accrue to California. Offsets also present similar problems. In order to meet its intended objectives, AB 32 must be implemented in a way that fosters the green economy and pollution reduction in California. AB 32 will fail if it exports jobs and environmental benefits out of California.

1. **AB 32’s Success Depends on Fostering Economic Growth in California**

It is critically important that we implement AB 32 to maximize economic growth in California. In undertaking this effort, California has the opportunity to be a model for the United States and the world. We must implement AB 32 in a way that leads by example so that others will want to replicate California’s success. CARB’s economic analysis released a few months ago provides evidence that AB 32 implementation will stimulate significant economic growth, and we agree that the potential is palpable. However, these benefits could be undermined through improperly designed linkage with other jurisdictions and by the use of offsets as an alternative to compliance. CARB must design the implementing regulations to foster economic growth in California and to minimize the loss of jobs and flight from California. The Board should clearly commit to these principles in the Scoping Plan.

* 1. **The Board Should Not Link California to Jurisdictions with Lower Regulatory Requirements**

The Board should not allow trading between California and other jurisdictions absent regulatory parity or other safeguards. Jobs, environmental benefits and economic wealth will flow away from the jurisdiction with the higher regulatory requirements when jurisdictions that have different regulatory requirements are linked. This is an unfortunate but unmistakable flaw in the plans to link California with the other WCI partner jurisdictions. Although the WCI design principles outlined in the WCI policy provide a clear intent to avoid disproportionate economic impacts, the policies do not shed any light on how they intend to achieve that goal. The WCI design principle states:

To attain the Western Climate Initiative’s regional GHG reduction goal, the WCI Partner jurisdictions are committed to designing a cap-and-trade system that maximizes total benefits in jurisdictions throughout the region, including reducing air pollutants, diversifying energy sources, and advancing economic, environmental, and public health objectives, while also avoiding localized or disproportionate environmental or economic impacts.

The only certain way to avoid disproportionate environmental and employment impacts is through a system where all participants share equal regulatory requirements. In the situation where other jurisdictions do not comply with California’s higher regulatory requirements, other safeguards must be designed to ensure fairness. Without ensuring regulatory parity, linking California to jurisdictions with lower regulatory requirements will result in a drain on California’s resources and undermine the success of the AB 32 program.

* 1. **Examples of Job and Environmental Losses That Could Result**

If California is linked with a jurisdiction that does not have as stringent air pollution regulations as California, then that jurisdiction is not likely to have as efficient and upgraded equipment in the industrial and electrical sectors. That jurisdiction is at a different starting point and would have a lot of easy and inexpensive opportunities available to achieve reductions in greenhouse gas emissions. Those jurisdictions would be able to achieve GHG reductions quickly and would sell their allowances to California – where the reductions will be more costly and time consuming to achieve. Money will flow out of California while investment and the reduction in co-pollutants takes place in other states. Exactly the opposite result is what we need for AB 32 to succeed.

Another scenario where linkage may well result in a wealth transfer between jurisdictions could occur in the allocation of allowances in the electricity sector. Some elements of the WCI program will not be standardized across all implementing jurisdictions by design.[[1]](#footnote-2) Allocation of auction allowances is one such element. This is a big mistake. If California distributes its allowances by auction and other jurisdictions choose to allocate for free on the basis of historical emissions, this could put California utilities and generators at a significant disadvantage because the other jurisdictions would be giving their electricity generators a competitive edge against California companies.

Although it is highly desirable to have all jurisdictions achieve the highest environmental standards, it must not be done on the backs of other jurisdictions. In these examples, environmental and employment benefits would flow out of California. Further, California would be paying for allowances – and seeing a wealth transfer to the other jurisdictions. This is

an inequitable result. This system could penalize California for having aggressive pollution control laws in place before the implementation of AB 32. The Scoping Plan should acknowledge this danger and pledge that California will not be linked with other jurisdictions without including some remedy for this unfair outcome.

1. **Offsets Can Also Undermine AB 32’s Positive Economic Stimulus**

CARB is proposing to allow up to 49% of the emissions reductions to be satisfied through offsets outside the capped system. The Board should reduce or eliminate the use of out of jurisdiction offsets. Offsets are another mechanism that can undermine the economic success of this program by drawing money out of California to be spent outside the jurisdiction. Many external programs have questionable effectiveness and, even if fully effective, would result in the exporting of environmental co-benefits. Reducing co-pollutants in California is an explicit statutory requirement of AB 32 that legally cannot be ignored by the Board. Offsets may also undermine the impetus for investment in new technology to reduce greenhouse gas emissions.

The entire concept of using offsets to enable flexible compliance is based upon the false assumption that there are measures that are surplus or “additional.” However, no surplus actually exists. Perhaps it could be argued that the 2020 goals leave room for some surplus in the short term, however, in the long-term, nothing is surplus. If any uncapped emissions are categorized as surplus now, it will be much harder to make them mandatory in the future. This program design should not incorporate the principle that there are surplus GHG emissions when there are not. Offsets should be minimized or eliminated.

1. **Cap and Trade is Problematic for the Electricity Sector**

Electricity is not like other commodities. Electricity is an essential service and its extremely complex system of generation and delivery leaves little margin for error. We should have learned from the electric deregulation debacle in 2001 that California cannot leave essential services to the vagaries of the marketplace. The cap and trade proposal would do just that. Direct regulation is preferable because it is transparent, simple and does not provide the myriad opportunities for cheating and skyrocketing costs for consumers.

Further, ever changing market prices simply do not provide the regulatory certainty required to support the major long-term investments needed to transform our energy systems. Changes in energy demand, fuel-price fluctuations, and a variety of other factors could cause demand for allowances to fluctuate significantly. Price volatility in allowance markets may deter long-term investments in low-carbon technologies that have high up-front costs. The long-term payoffs of making such investments will be very uncertain if the future price of CO2 is unknown. Cap and trade is also likely to have many hidden costs because revenues will flow to market participants, speculators and consultants rather than directly to programs that reduce GHG emissions.

Moreover, there is simply no way to both fairly reward those starting with relatively low carbon portfolios while not unfairly penalizing those with relatively high carbon legacy portfolios. Nor is there any reason to try since electric utilities are simply pass-through entities, with all of the costs placed on ratepayers.

The good news here is that a market system is entirely unnecessary in the electric utility sector. We know what to do, and the basic elements are already in the Scoping Plan: energy efficiency and increased renewables.

1. **Conclusion**

As we carve out the path for implementing AB 32, we have an incredible chance to do more than just reduce GHG emissions. This is our moment to make deep and permanent reductions of pollution, revitalize the economy, and restore California’s economic prosperity. However, we must be careful to steer clear of complicated and counterproductive schemes to reduce greenhouse gases. Linking with the WCI may drain the benefits from California that would have accrued to the workforce and to our environment. If we do not implement AB 32 so that it produces substantial, visible economic benefits for middle class workers, we will not ultimately succeed in creating a model that produces world-wide reductions in greenhouse gas emissions.

We appreciate the opportunity to comment on the Proposed Scoping Plan and look forward to continuing to work with CARB.

 Sincerely,

Robert L. Balgenorth

President

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1. Design Recommendations for the WCI Regional Cap-and-Trade Program, September 23, 08, p. 51. [↑](#footnote-ref-2)